



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

JUL 13 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Fitzgerald Glider Kits LLC
Fitzgerald USA, LLC
752 Interstate Lane
Crossville, TN 38571

ATTENTION: Tommy C. Fitzgerald
President and CEO

Request for Information Under § 208(a) of the Clean Air Act, 42 U.S.C. § 7542(a)

The United States Environmental Protection Agency ("EPA") hereby requires Fitzgerald Glider Kits LLC, Fitzgerald USA, LLC, and any of their parent organizations, affiliates, predecessors, successors, and assignees (collectively "Fitzgerald" or "You"), to provide the information requested below ("Information Request").

EPA issues this Information Request under Section 208(a) of the Clean Air Act ("CAA"), 42 U.S.C. § 7542(a). Under Section 208(a), the Administrator of the EPA may require any person who is subject to the CAA to provide information necessary to determine whether the person has acted in compliance with these requirements and the regulations promulgated thereunder. The Administrator has delegated this authority to the undersigned Director of the Air Enforcement Division, Office of Enforcement and Compliance Assurance.

Appendix A provides definitions. Appendix B provides instructions for Your responses to this Information Request. Appendix C specifies the information that You must provide. Appendix D provides information about asserting a claim of confidentiality over information You provide in response to this Information Request. Appendix E contains the form with which You are required to certify the truth and completeness of Your response.

You must provide this information to the EPA representative listed below within thirty (30) calendar days from the date of this Information Request. Please carefully review the instructions, definitions, and specific Requests as You prepare Your response. Please do not hesitate to contact Evan Belser, Chief, Vehicle and Engine Enforcement Branch, at belser.evan@epa.gov or (202) 564-6850 if you have questions, concerns or suggestions regarding the content or scope of this request, or concerning the timeframe in which to respond.

Failure to provide the requested information may result in a civil action pursuant to Section 205(b) of the CAA, 42 U.S.C. § 7524(b). Failure to provide all requested information in its entirety, and in the format requested, may result in additional inquiries and penalties. Pursuant to Sections 208 and 307 of the CAA, 42 U.S.C. §§ 7542(a)–(b), 7607(a), EPA may request additional information, inspections, or depositions. It is important that Your responses be clear, accurate, organized, and complete. EPA will regard any information that is misleading, false, incomplete, or provided without regard to its accuracy as a violation of the CAA and/or criminal statutes.

You must provide all requested information with the following certification, provided here as Appendix E, signed by an authorized officer of each entity providing information:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

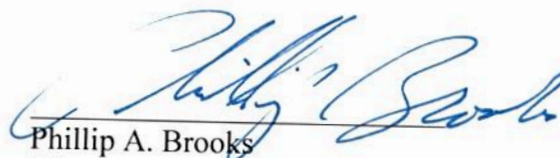
You may be entitled to assert a business confidentiality claim covering all or part of the information provided in response to this Information Request as specified in the Confidentiality of Business Information (“CBI”) regulations, 40 C.F.R. Part 2, Subpart B. You must specify the page, paragraph, and sentence when identifying the information subject to Your CBI claim. Appendix D of this Information Request provides process and substantiation requirements for asserting business confidentiality claims. EPA may, without further notice, provide the public with any information not subject to a CBI claim.

EPA may use any information provided in response to this Information Request in an administrative, civil, or criminal action.

Please provide all requested information, via courier service or overnight delivery, to:

Evan Belser, US EPA
1200 Pennsylvania Avenue, N.W.
William Jefferson Clinton Federal Building Room 1109B
Washington, D.C. 20004

Sincerely,

A handwritten signature in blue ink, appearing to read "Phillip A. Brooks", is written over a horizontal line.

Phillip A. Brooks
Director
Air Enforcement Division
Office of Civil Enforcement

Copy: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

Appendix A

Definitions

All terms used in this Information Request will have their ordinary meaning unless such terms are defined below or in the CAA, 42 U.S.C. §§ 7401–7671q, or the regulations found at 40 C.F.R. Parts 85, 86, 89, 90, 1036, 1037, 1039, 1048, 1051, and 1068, in which case they shall have their meanings as defined therein.

1. The term “information” includes any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intraoffice communications, electronic mail (“email”), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting, or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, presentations, spreadsheets, and worksheets. The term “information” includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term “information” also includes any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voicemails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back-up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. Information bearing any notation not part of the original text is considered to be separate information. A draft or non-identical copy is separate information within the meaning of this term.
2. The term “entity” means any natural person, corporation, partnership, limited liability company, sole proprietorship, joint venture, or any formal or informal group, organization or association.
3. The term “person” includes an individual, corporation, partnership, or association. *See* Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
4. A reference to any entity by name includes the entity and any of the entity’s affiliated organizations, predecessors, successors, and assignees.
5. The term “You” means, collectively, Fitzgerald Glider Kits LLC, Fitzgerald USA, LLC,

and any of their parent organizations, affiliates, predecessors, successors, and assignees.

6. The term “affiliated organization” means any organization or entity associated with another entity as an agent, parent organization, predecessor corporation, subsidiary organization, or any organization, or entity acting in lieu of another entity.
7. The term “element of design” means any control system (e.g., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine, as defined in 40 C.F.R. §§ 86.094-2 and 86.1803-01.
8. The term “electronic control module” or “ECM” means a device that receives inputs from various sensors and outputs signals to control engine, vehicle, or equipment functions. The ECM uses software programming including calculations and tables of information to provide the appropriate outputs. Multiple electronic control modules may be incorporated in a single unit to control various engine, vehicle, or equipment functions. ECM can be a generic term but may refer specifically to the engine control module when discussing emission controls on vehicles and engines. Examples of electronic control modules include, but are not limited to, the Engine Control Module, OBD Control Modules, Powertrain Control Module (“PCM”), Transmission Control Module (“TCM”), Body Control Module (“BCM”) and aftertreatment control module.
9. The term “engine tuner” or “tuner” means any part or component capable of accessing, altering, or replacing the software programming, calculations, computer logic, tables of information (e.g., fuel timing maps), coding, or other content or information stored within or used by an ECM.
10. The term “engine tune” or “tune” means any combination of software programming, calculations, computer logic, tables of information (e.g., fuel timing maps), coding, or other content or information, stored in any form, capable of affecting or controlling an ECM.
11. The term “product” includes any software code, software, hardware, program, element of design, calibration, engine tune, engine tuner, device, part, or component.

Appendix B
Instructions for Responses

1. Provide a complete, detailed response, in English, to each Request in Appendix C, below.
2. Where a Request allows or requires documents to be provided in response, provide all documents electronically in a folder specific to that question or subpart and labeled accordingly. Provide copies of documents, not original documents.
3. For each response, please provide the number of the Request to which it responds and identify each person who provided information that was used to prepare that answer. For each document produced, please provide the number of the Request to which it responds.
4. When a response is provided in the form of a number, specify the units of measure of the number in a precise manner.
5. Where documents or information necessary for a response is not in Your possession, custody, or control, indicate in Your response why such documents or information are not available or in Your possession, custody, or control, and identify any source that either possesses or is likely to possess such information.
6. Where You have previously provided information to the EPA that is responsive to any of the Requests set forth in Appendix C, re-submit that information in accordance with these instructions (Appendix B).
7. Please provide Your response to this Information Request in electronic form on a disk (CD or DVD media). All responsive documents and materials (e.g., copies of print media, audio, and visual material) must be provided as an accurate and legible copy in searchable format, number stamped in sequential order (e.g., BATES stamped). Where spreadsheets are responsive to a Request, produce them in unlocked electronic spreadsheet format, such as .xls or .csv (locked spreadsheets, .pdf files and images are unacceptable).
8. You must promptly supplement Your response to any Request in Appendix C in the event You learn that You possess responsive information not yet produced or if You gain possession, custody, or control of responsive information after responding to this Information Request.

Appendix C

Information Request

Provide the following information, pursuant to Section 208 of the CAA, 42 U.S.C. § 7542.

1. Please identify by make, model, model year, EPA engine family, and serial number every engine (including every motor vehicle engine, nonroad engine, and engine block with an installed crankshaft) that, since January 1, 2016, Fitzgerald remanufactured, rebuilt, repaired, maintained or otherwise prepared for the purpose of resale or installation in a vehicle (including any glider kit or any motor vehicle). Hereafter, these are referred to as the “subject engines.”
2. Please describe what procedure if any Fitzgerald takes to avoid violating the prohibition on tampering and aftermarket defeat devices in section 203(a)(3) of the Clean Air Act, 42 U.S.C. § 7522(a)(3).
3. At the time when Fitzgerald completed the remanufacturing, rebuilding, repair, maintenance, or other preparation of each subject engine for resale, was each and every subject engine in the configuration that its original manufacturer certified with the EPA? At the time when Fitzgerald completed installation of each subject engine in a vehicle (including any glider kit or any motor vehicle), was each and every subject engine in the configuration that its original manufacturer certified with the EPA?

The configuration certified with the EPA is the unique combination of hardware (e.g., pistons, camshafts, rods) and software (e.g., fueling strategy) for which the original engine manufacturer obtained an EPA-certificate of conformity.

4. If the answer to either parts of Question 3 is no, please identify which if any subject engines were, once Fitzgerald completed the subject engine for resale or installed it in a vehicle, in the configuration that its original manufacturer certified with the EPA.
5. For those subject engines that were, once Fitzgerald completed the subject engine for resale or installed it in a vehicle, not in the configuration that its original manufacturer certified with the EPA, please provide the following information for each subject engine:
 - a. a statement whether, once Fitzgerald completed the subject engine for resale or installed it in a vehicle, the subject engine was in a configuration certified with the EPA under a different engine family than the engine family to which that motor vehicle engine was originally certified;
 - b. a statement of whether and to what extent Fitzgerald changed elements of design of the subject engine according to the original engine manufacturer’s instructions;
 - c. any reasonable technical basis for knowing that the subject engine’s emission control system performs as well as, or better than, it performs in its certified configuration; and

- d. a description of the final configuration of the subject engine, and how that compares to the certified configuration.
6. Did Fitzgerald change or replace the software or calibrations on the subject engines, or change the ECM in any way? If yes:
 - a. Was this software obtained from the original engine manufacturer?
 - b. Did Fitzgerald use any product to change the ECM, and if so what product?
 - c. For each subject engine, describe each and every change made to the software or the ECM.
7. Fitzgerald's website at <https://www.fitzgeraldgliderkits.com/detroit-60-series/> (last visited July 10, 2018) contains the following statement: "The in-house reman is remanufactured by Fitzgerald Glider Kits using a combination of Detroit parts and some aftermarket parts that we we [sic] have tested over the years for better longevity, fuel mileage, and durability."
 - a. Please state whether the Detroit parts Fitzgerald installs in the "in-house reman" are the exact same parts that Detroit Diesel Corporation used when it originally manufactured that motor vehicle engine.
 - b. Please provide a detailed list of the "aftermarket parts" referenced by this statement from Your website.
 - c. Please describe and provide the results from the testing referenced by this statement from Your website.
8. In a media interview in 2014, Tommy C. Fitzgerald described the engines Fitzgerald remanufactures in house. He was quoted as saying, "We set the engine up to where it can be more efficient" Overdrive, Gliders 101: Five common questions about glider kits answered (July 29, 2014), *available at* <https://www.overdriveonline.com/gliders-101-five-common-questions-about-glider-kits-answered/> (last visited July 10, 2018) ("We set the engine up to where it can be more efficient," says Tommy Fitzgerald. Fuel economy benefits, he says, are achieved through special programming of the engine's electronic control module and from the external and internal parts used in the engine rebuilding process. Fitzgerald says that based on customer feedback from real-world testing, the company pegs the mpg of its kits at 7 or higher.").

Please describe what Fitzgerald does in order to make its remanufactured engines more fuel efficient than the original engine manufacturer's configuration. To the extent not already answered in response to previous questions, describe the "special programming" and "internal and external parts" referenced in this interview.

9. For each subject engine, state whether You or any other entity conducted tests on one or more subject engines to measure emissions of hydrocarbons (HC), carbon monoxide (CO), oxides of nitrogen (NO_x), or particulate matter (PM). For each test, provide the following:
 - a. A description of the test, including identification of the test engine, EPA engine family, test equipment, test protocols, and calibration procedures; and
 - b. A copy of the test report which includes the date and location of the test, the name and position of the person who conducted the test, and the test results.
10. For any product Fitzgerald used in producing the subject engines, state whether you or the product manufacturer submitted an application for an Executive Order to the California Air Resources Board and provide a copy of the application for each product. State whether each product received an Executive Order exempting the component from California's emission control system anti-tampering law, California Vehicle Code § 27156. If the component received an Executive Order, provide the Executive Order number.
11. Please describe generally where and how Fitzgerald sourced the used engines and used engine parts that Fitzgerald used to produce the subject engines.
12. Please state whether, since January 2016, Fitzgerald installed any parts or components from any engine that was either from a nonroad engine or not certified with the EPA (e.g., engines for foreign countries, even if the same configuration as previously certified with the EPA).
13. Did each subject engine include, once Fitzgerald completed its work, an engine block from a used motor vehicle engine? Did Fitzgerald produce any subject engine with a new engine block?

Appendix D

Confidential Business Information

An entity may assert a business confidentiality claim covering all or part of the information provided in response to this Information Request for any business information entitled to confidential treatment under Section 208(c) of the CAA, 42 U.S.C. § 7542, and 40 C.F.R. Part 2, subpart B. Under Section 208(c) of the CAA, entities are entitled to confidential treatment of information that would divulge methods or processes entitled to protection as trade secrets. Under 40 C.F.R. Part 2, subpart B, business confidentiality means “the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information.” 40 C.F.R. § 2.201(e).

Information covered by a claim of business confidentiality will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in Section 208(c) of the CAA and 40 C.F.R. Part 2, subpart B. EPA will construe a failure to furnish a business confidentiality claim with a response to this Information Request as a waiver of that claim, and the information may be made available to the public without further notice.

Pursuant to 40 C.F.R. § 2.301(h), the EPA possesses the authority to disclose to any authorized representative of the United States information which might otherwise be entitled to confidential treatment. To assist in its review and analysis, the EPA may disclose information provided in response to this and other information requests to an EPA contractor, the Eastern Research Group, under contract number EP-W-15-006. An entity may submit any comments to the EPA with its assertion of a business confidentiality claim.

To assert a business confidentiality claim, an entity must place on (or attach to) all information subject to the claim either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential” at the time it provides its response to this Information Request. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified, and may be provided separately to facilitate identification and handling by the EPA. An entity should indicate whether confidential treatment is only required until a certain date or until the occurrence of a certain event.

The criteria the EPA will use in determining whether material claimed as business confidential is entitled to confidential treatment are set forth at 40 C.F.R. §§ 2.208 and 2.301. These regulations provide, among other things, that an entity must satisfactorily show that: (1) the information is within the scope of business confidentiality as defined at 40 C.F.R. § 2.201(e), (2) that it has taken reasonable measures to protect the confidentiality of the information and that it intends to continue to do so, (3) the information is not and has not been reasonably obtainable by legitimate means without its consent, and (4) the disclosure of the information is likely to cause substantial harm to its business’s competitive edge. *See* 40 C.F.R. §§ 2.208 (a)-(e). Emission data, as defined at 40 C.F.R. § 2.301(a)(2), is expressly not entitled to confidential treatment under 40 C.F.R. Part 2, subpart B. *See* 42 U.S.C. § 7542(c); 40 C.F.R. § 2.301(e).

If an entity asserts a claim of business confidentiality in connection with information and documents forwarded in response to this Information Request, in accordance with 40 C.F.R. § 2.204(e)(4), it must answer the following questions with respect to any information or document for which it asserts a claim of business confidentiality:

1. What specific portions of the information are allegedly to be entitled to confidential treatment? Specify by page, paragraph, and sentence when identifying the information subject to the claim.
2. For what period of time do you request that the information be maintained as confidential (*e.g.*, until a certain date, until the occurrence of a specified event or permanently)? If the occurrence of a specific event will eliminate the need for confidentiality, specify that event. Additionally, explain why the information should be protected for the time period you have specified.
3. What measures have you taken to protect the information claimed as confidential from undesired disclosure? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
6. For each category of information claimed as confidential, explain with specificity whether disclosure of the information is likely to result in substantial harm to your competitive position. Explain the specific nature of that harm, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effect. How could your competitors make use of this information to your detriment?
7. Is there any other explanation you deem relevant to the EPA's determination of your business confidentiality claim that is not covered in the preceding requests? If so, you may provide such additional explanation.

An entity must furnish responses to the above questions concurrent with its response to this Information Request if it has claimed any information as business confidential. *See* 40 C.F.R. § 2.204(e)(2). Pursuant to 40 C.F.R. § 2.205(b)(2), an entity may request an extension of this deadline.

The EPA will construe a failure to furnish timely responses to the above questions as a waiver of any confidentiality claim, consistent with 40 C.F.R. § 2.204(e)(1). Please provide responses to:

Evan Belser, US EPA
1200 Pennsylvania Avenue, N.W.
William Jefferson Clinton Federal Building Room 1109B
Washington, D.C. 20004

Pursuant to 40 C.F.R. § 2.205(c), be hereby advised that information provided as part of any comments may be entitled to confidential treatment if, when it is received by the EPA, it is marked in accordance with 40 C.F.R. § 2.203(b). As required by 40 C.F.R. § 2.204(e)(6), an entity may assert a business confidentiality claim covering all or part of its response to these requests, as provided in 40 C.F.R. § 2.203(b). Information covered by such a business confidentiality claim will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in Section 208(c) of the CAA and 40 C.F.R. Part 2. The EPA will construe the failure to furnish a confidentiality claim with the comments as a waiver of that claim, and the information may be made available to the public without further notice.

Appendix E
Statement of Certification

You are submitting the enclosed documents in response to the U.S. Environmental Protection Agency's ("EPA") Information Request, issued pursuant to Section 208(a) of the Clean Air Act, to determine compliance with the Clean Air Act and its affiliated regulations.

I certify that I am fully authorized by _____ [corporate affiliation] to provide the above information on its behalf to EPA.

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

Date: _____

Name (Printed): _____

Signature: _____

Title: _____

CERTIFICATE OF MAILING

I, Evan Belser, certify that on this day I sent this Request for Information under section 208(a) of the Clean Air Act, 42 U.S.C. § 7542(a), by Certified Mail, return receipt requested, to:

Fitzgerald Glider Kits LLC
Fitzgerald USA, LLC
752 Interstate Lane
Crossville, TN 38571

Date: July 13, 2018



Evan Belser, Chief
Vehicle and Engine Enforcement Branch
Air Enforcement Division
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
202-564-6850
belser.evan@epa.gov